

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLAUDE T. GREEN and TENNESSEE VALLEY AUTHORITY,
WATTS BAR NUCLEAR PLANT, Spring City, TN

*Docket No. 02-1705; Submitted on the Record;
Issued November 26, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation.

On August 24, 1984 appellant, then a 36-year-old crane operator, was descending from a crane when he fell and landed on his right lower back. The Office accepted appellant's claim for a right hip contusion and lumbosacral strain. Appellant received continuation of pay and compensation for the periods he did not work until he returned to light-duty work on January 10, 1985. He received compensation thereafter for the periods he did not work. On September 7, 1988 appellant began part-time employment as a veteran's service officer increasing to full-time employment on September 19, 1988.¹ The Office determined that appellant had a 70 percent loss of wage-earning capacity and reduced appellant's compensation accordingly.

In a June 9, 2000 letter, the Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Steven Weissfeld, a Board-certified orthopedic surgeon, for an examination and second opinion on the extent of appellant disability due to his employment-related conditions. In a July 7, 2000 report, Dr. Weissfeld diagnosed status post lumbosacral strain and hip contusion. He stated that x-rays showed significant degenerative changes in the lumbar vertebrae. Dr. Weissfeld indicated that appellant had an anterior spondylolisthesis of L5 on S1 of 10 to 15 percent with severe narrowing of the disc space. He noted large anterior osteophytes which might be bridging at L5-S1. Dr. Weissfeld found smaller

¹ The Office found that appellant received an overpayment for the period September 19, 1988 through January 14, 1989 because he received compensation for the same period that he was working. In a December 26, 1990 decision, the Board found that appellant had received an overpayment during the period in question. The Board found that the Office did not establish that appellant was at fault in the creation of the overpayment for the period September 19 through October 22, 1988. The Board concluded that the Office had established that appellant was at fault in the creation of the overpayment for the period October 23, 1988 through January 14, 1989. *Claude T. Green*, 42 ECAB 274 (1990).

traction spur-type osteophytes at L4-5 and L3-4. He concluded that appellant had signs of degenerative disc disease and osteoarthritis. Dr. Weissfeld stated that the lumbosacral strain and hip contusion had resolved. He commented that appellant was not experiencing disabling residuals from his employment injury at the time of the examination. Dr. Weissfeld indicated that appellant was capable of performing the physical requirements of the job of crane operator. He noted that appellant had mitigating factors of nonwork-related conditions such as degenerative disc disease and spinal osteoarthritis. Dr. Weissfeld indicated that appellant could sit 6 hours a day at 45 minutes each hour, walk 4 hours a day at 30 minutes each hour and stand 6 hours a day at 45 minutes each hour. He concluded that appellant could reach above his shoulder eight hours a day, twist six hours a day, perform repetitive motions of the wrist and elbow eight hours a day. Dr. Weissfeld stated that appellant could lift, push and pull up to 40 pounds for 2 hours a day and could lift, push and pull up to 30 pounds for 4 to 6 hours a day.

In a September 29, 2000 decision, the Office informed appellant that it proposed to terminate his compensation on the grounds that the evidence of record established that his work-related condition had resolved and that any disability was due to concurrent or preexisting conditions. The Office informed appellant that he had 30 days to submit additional evidence if he disagreed with the proposed decision to terminate his compensation. In an October 9, 2000 response, appellant indicated that he had never experienced back pain before his April 24, 1984 employment injury. He commented that his symptoms remained the same as those from the employment injury. Appellant claimed that the extent of his pain would prevent him from sitting or working on a crane for eight hours a day.

In an October 30, 2000 decision, the Office terminated appellant's compensation on the grounds that the injury-related condition had resolved. Appellant requested a hearing before an Office hearing representative. In a March 19, 2001 decision, the Office hearing representative found that Dr. Weissfeld had not provided any medical rationale in support of his opinion. The Office hearing representative concluded, therefore, that the Office had not met its burden of proof in terminating appellant's compensation. She vacated the Office's October 30, 2000 decision and remanded the case so that the Office could request a further explanation from Dr. Weissfeld on the basis for his opinion.

The Office requested that Dr. Weissfeld clarify his opinion on whether appellant's employment-related disability had ceased. In a June 30, 2001 report, Dr. Weissfeld stated that, at the time of his examination, there were no objective physical findings to indicate that any residual lumbosacral strain and hip contusion remained. He commented that typically a contusion would last for several weeks and a sprain for up to several months. Dr. Weissfeld indicated that the employment injury had occurred 16 years previously. He stated that the nonwork-related findings of degenerative disc disease and spinal osteoarthritis preexisted the employment injury. Dr. Weissfeld noted that these conditions occur due to the normal aging process. He indicated that these conditions were not caused or aggravated by the work-related injury.

Appellant submitted an April 3, 1998 report from Dr. Bennett W. Caughran, who stated that appellant had been having more back pain for the prior several weeks, with pain radiating into the right leg. Dr. Caughran noted that appellant had limited lumbar motion. He reported that x-rays showed narrowing of the lumbosacral joint with a first degree spondylolisthesis and

osteophyte formation. He advised appellant to restrict bending, stooping and lifting and any other activity that caused more morning stiffness.

In a July 23, 2001 letter, the Office again proposed to terminate appellant's compensation. In an August 24, 2001 decision, the Office terminated appellant's compensation effective September 9, 2001 on the grounds that his employment-related disability had ceased by that time.

In a September 18, 2001 letter, appellant requested an oral hearing which was conducted on February 20, 2002. He subsequently submitted additional medical evidence. In a February 18, 2002 report, Dr. Steven A. Sanders, a Board-certified neurosurgeon, stated that lumbar x-rays showed a Grade I spondylolisthesis at the lumbosacral junction associated with degenerative changes that were the cause of appellant's discomfort. He observed bone spurs at L2, L3, L4 and L5. Dr. Sanders diagnosed low back pain and noted that appellant had no obvious radiculopathy. He related that appellant stated his symptomatology had been getting worse for a long time with a flare up over the past year. Dr. Sanders noted that appellant related his condition to the 1984 work injury. He noted that he would refer appellant for a magnetic resonance imaging (MRI) scan of the lumbosacral spine. Dr. Sanders commented that if it appeared that there were no new disc abnormalities which had developed, he would conclude that appellant's spine had been like that for several years. He stated that, if that were the case, appellant's symptomatology would be old in nature and not treatable by surgical intervention. In a March 4, 2002 report, Dr. Sanders stated that the MRI scan showed a Grade I anterolisthesis of L5 on S1 with moderate degenerative disc disease and mild foraminal narrowing as a result. He noted no focal disc herniation. Dr. Sanders related that appellant indicated the anterolisthesis was present prior to the employment injury. He concluded that appellant had chronic low back pain with no evidence of recent injury. Dr. Sanders stated that appellant had preexisting injuries dating to 1984 and a preexisting anterolisthesis. He indicated that he could not state definitively that appellant's pains were associated with either the 1984 employment injury or the preexisting anterolisthesis.

In an April 16, 2002 decision, the Office hearing representative affirmed the Office's decision to terminate appellant's compensation.

The Board finds that the Office properly terminated appellant's compensation.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.²

Dr. Weissfeld stated that appellant had spondylolisthesis and degenerative osteoarthritis of the lumbar spine which preexisted the employment injury and was due to the aging process. He indicated that appellant's accepted employment injuries of lumbosacral strain and hip contusion had long since resolved. Dr. Weissfeld concluded that appellant's disability was due

² Jason C. Armstrong, 40 ECAB 907 (1989).

to the preexisting conditions which were not aggravated or affected by the employment injury. Dr. Sanders reported that he could not definitively relate appellant's condition to the employment injury. He therefore did not provide an opinion on the central issue of whether appellant had any disability causally related to the employment injury. The weight of the medical evidence therefore rests with the rationalized report of Dr. Weissfeld that appellant no longer had any disability due to the employment injury. His report provided sufficient support for the Office's decision to terminate appellant's decision.

The decisions of the Office of Workers' Compensation Programs dated April 16, 2002 and August 24, 2001 are hereby affirmed.

Dated, Washington, DC
November 26, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member